



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 9, 1992

**Honorable James L. Anderson, Jr.
Aransas County Attorney
Aransas County Courthouse
301 North Live Oak
Rockport, Texas 78382**

Letter Opinion No. 92-84

Re: Whether the Aransas County Navigation District can use tax revenues to pay the expenses enumerated in section 60.105 of the Water Code (ID# 17766)

Dear Mr. Anderson:

You have requested an opinion from this office regarding the construction of sections 60.103 and 60.105 of the Water Code. In particular, you ask whether the Aransas County Navigation District may use tax revenues to pay the expenses enumerated in section 60.105 of the Water Code or whether these expenses must be paid from fees and charges collected under section 60.103 of the Water Code. You explain that the district generates revenue by imposing fees and charges under section 60.103 and needs to determine whether it must collect enough revenue from these fees and charges to cover all the expenses enumerated in section 60.105.

Both section 60.103 and section 60.105 are contained in subchapter E of chapter 60; subchapter E is entitled "Powers of Districts for Improvement of Port Facilities." Section 60.103 of the Water Code requires a navigation and canal commission to prescribe reasonable fees and charges for the use of the land, improvements, and facilities of the district and for the use of port facilities acquired by the district. This section also provides that:

The fees and charges shall be . . . sufficient to produce revenue adequate to pay the expenses mentioned in Section 60.105 of this code.

Section 60.105 of the Water Code provides as follows:

(a) The commission shall pay from revenue raised under Section 60.103 of this code:

(1) all expenses necessary to the operation and maintenance of the improvements and facilities, including the

cost of the acquisition of properties and materials necessary to maintain the improvements and facilities in good condition and operate them efficiently, the wages and salaries paid to the employees of the district, and other expenses necessary to the efficient operation of the improvements and facilities;

(2) the annual or semiannual interest on any obligations issued under this subchapter and payable out of the revenue of the improvements and facilities; and

(3) the amount required to be paid annually into the sinking fund for the payment of any obligations issued under this subchapter and payable out of the revenue of the improvements and facilities.

(b) No expenses other than those authorized by Subsection (a) of this section may be paid from the revenue of the improvements and facilities as long as the principal and interest on any obligations issued under this subchapter remain outstanding and unpaid. Any revenue received in excess of that required for the purposes stated in Subsection (a) of this section may be used by the commission to pay the cost of improvements and replacements which are not listed and may establish a depreciation fund.

When read together, we believe that the plain language of these sections requires the navigation district to pay the expenses enumerated in section 60.105 out of the revenue generated under section 60.103. Section 60.105(a) states that the district *shall* pay the enumerated expenses from revenue raised under section 60.103. Section 60.103 provides that the fees and charges "*shall* . . . be sufficient to produce revenue adequate to pay the expenses mentioned in section 60.105 of this code." (Emphasis added). The word "shall" generally is construed to be mandatory. *Lewis v. Jacksonville Bldg. & Loan Ass'n*, 540 S.W.2d 307, 310 (Tex. 1976). Moreover, the express mention of one thing in a statute is tantamount to an exclusion of all others, making affirmative words imply the negative of what is not affirmed. *Ex parte Halsted*, 182 S.W.2d 479, 484 (Tex. Crim. App. 1944). Thus, not only does the language of these sections mandate that the district pay the expenses enumerated in section 60.105 out of revenue generated under section 60.103, it also implies that the district cannot use other funds to pay these expenses. Furthermore, because the district is required to produce enough revenue under section 60.103 to


pay the expenses listed in section 60.105, it has no need to use other sources of revenue to pay those expenses.

We also believe that this interpretation of these sections is consistent with the apparent intent of the legislature. The list of expenses in section 60.105 along with the requirement that the revenues generated under section 60.103 be sufficient to pay these expenses suggests that the legislature wanted those using the facilities of the navigation districts to pay the operating costs of the districts. Permitting the districts to use tax revenue to pay the expenses enumerated in section 60.105 would contravene this purpose.

S U M M A R Y

The Aransas County Navigation District may not use tax revenues to pay the expenses enumerated in section 60.105 of the Water Code. Navigation districts must pay the expenses enumerated in section 60.105 of the Water Code from the fees and charges collected under section 60.103 of the Water Code.

Yours very truly,


Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee